

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.205 Of 2000.

Judgment reserved on 18.7.2007.

Date of decision: July 20th, 2007.

State of Himachal Pradesh.

..... Appellant.

Vs.

Gurpal Ram and others.

..... Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? Yes.

For the Appellant: Mr. Ashutosh Burathoki Addl. Advocate General.

For the respondents: Mr. Virender Rathore, Advocate, vice
Mr. Bhupender Bhardwaj, Advocate.

Surinder Singh, J:

This appeal filed by the State against the acquittal of the respondents in Criminal Case No.20-III of 1994, decided on 2nd June, 1998, by Judicial Magistrate Ist Class, Rohru.

The factual matrix of the case is that during the intervening night of 29th/ 30th April, 1994, PW& S.I. Abdul Hamid was on patrolling duty in Rohru Bazar. Dy. Superintendent of Police K.S. Guleria was on the checking duty, alongwith some police officials in his Gypsy. Abdul Hamid (S.I.) spotted a Tempo No.PB-08-J-9825 coming from meat market towards upper market Rohru, which was being driven by Gurpal Ram, respondent and the other respondents were the occupants

Whether reporters of local Papers may be allowed to see the judgment? Yes.

thereof. On checking, it was found having seven Karian (rafters) and three planks of Deodar of different sizes. The respondents failed to produce any permit, as such, the aforesaid case property was seized and taken into possession vide recovery memo Ext.PW2/A alongwith the documents of the vehicle vide memo Ext.PW2/B. The rukka Ext.PW7/A was sent for registration of the case, on the basis of which FIR Ext.PW7/B was registered. Case property was given on supurdari to Kalyan Singh, Range Officer vide memo Ext. PW1/A. The police had also prepared site plan Ext.PW7/C. After recording statements of the witnesses under Sections 161 of the Code of Criminal Procedure, the case under Section 41 and 42 of the Indian Forest Act was put up in the court after completing the investigation.

Finding a prima-facie case under the aforesaid Sections, the respondents were accordingly charge-sheeted. However, they pleaded not guilty and claimed trial.

To prove its case, prosecution examined PW1 Kalyan Singh, Range Officer, PW2 LHC Mohan Lal, PW3 Dharam Sain, PW4 Shyam Lal, PW5 Dy.S.P. K.S.Guleria, PW6 M.S. Parmar, SI Abdul Hamir (PW7) and HC Om Parkash, PW8. The respondents were also examined under Section 313 of the Code of Criminal Procedure. Respondent Gurpal Ram, driver set out the defence that the timber was in the shape of rafters, taken from old dismantled house of the respondent Parmod Kumar, to give the support to the Cows loaded in the Tempo, whereas, the defence of the other respondents was denial simplicitor. No defence evidence was led.

After hearing the learned counsel for the parties and upon going through the record, the learned trial court had acquitted the respondents, which has been challenged in the instant appeal, on the ground that the prosecution evidence was not properly considered and much importance was given to the minor contradictions.

The leave to appeal was granted on 9.5.2000 by this Court. Now the matter has been finally heard.

Mr. Ashutosh Burathoki, learned Additional Advocate General, has vehemently argued that the case of the prosecution stood proved on the evidence on record and the learned trial Court has passed the impugned judgment on conjecture and surmises.

Contra, Shri Virender Rathore, learned counsel for the respondents while supporting the impugned judgment has argued that the prosecution has failed to prove that the respondents were transporting the seven rafters and three planks from one revenue estate to another revenue estate or out of the Forest Division in order to bring their case within the mischief of offences charged.

I have considered the rival contentions of the parties and have reappraised the evidence on record.

PW2 LHC Mohan Lal has admitted that the respondent Parmod Kumar has a house at Rohru and he also runs a shop. He as well as PW1 Kalyan Singh, Range Officer has admitted that the timber which was recovered were quite old. This fact has also been admitted by PW7 SI Abdul Hamid. He has further admitted the case of the respondents that two Cows were also

loaded in the Tempo and the case of the respondents has been that the Cows were being transported and the rafters and planks were put to give support. These were taken from the dismantled building of respondent Parmod Kumar. However, PW7 aforesaid has admitted that the said timber was smeared with cow dung. PW3 Dharam Sain, an independent witness was also examined. According to him, the Tempo was being engaged for transporting the Cows, purchased from Rohru, by respondent Parmod Kumar to village Gouna. Though, he was declared hostile by the prosecution, but his testimony cannot be thrown out on this very score. The story put forth by the respondents-accused has been probablised by him and further he has admitted that Parmod Kumar aforesaid had dismantled his old house. According to Dy.S.P. K.S. Guleria, the respondents could not produce the permit, but on the scrutiny of the prosecution evidence, it transpires that the respondents were apprehended in Rohru Bazar, while carrying the timber which were brought by them from Meat market Rohru itself. Since both the Meat market and Rohru Bazar where the alleged timber was caught is within the same Forest Division, thus, no permit was required under the Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978. Even there is not even an iota of evidence to show that the timber in question was being transported from one revenue estate to another revenue estate, in absence of which the violation of Sections 41 and 42 of the Indian Forest Act read with Rule 11 of the Rules aforesaid is not made out. The defence is probablised and after analyzing the submissions

made by the learned counsel for the parties, in my considered opinion, the explanation given by the respondent is quite satisfactory, convincing and honest, which is further strengthened in view of the statements of the official witnesses, discussed above. Accordingly, I find no merit in the appeal and the same is dismissed.

The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged. The matter is disposed of accordingly.

July 20th, 2007.
(PDS)

(Surinder Singh)
Judge.